Supreme Court, U.S.
FILED
APR 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1554

In The

Supreme Court of the United States

October Term, 1985

IN RE: ADOPTION OF:
BABY GIRL LEDBETTER, a Minor,
ROBERT DENNIS SANTARELLI and
KAREN SUE SANTARELLI,

Petitioners,

v.

JAMES C. ELLISON,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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STATEMENT OF THE CASE

Respondent would submit the following additions to the Statement of the Case found in Petitioners' Petition for Writ of Certiorari.

The evidence at the trial of this matter on October 31, 1983 revealed that the natural mother had been separated from ROBERT W. LEDBETTER, JR. for approximately Nine (9) months prior to her becoming pregnant and that they had lived in different States during that time and had not spoken or had any contact with one another at all. The final Divorce Decree was entered between them shortly after the natural mother became pregnant. From the time Respondent discovered that the natural mother was pregnant until the child was taken from the hospital, Respondent constantly stayed in contact with the natural mother, stating to her that he would support the child when born and that if she did not wish to keep the child, that he wanted to have custody of the child. The natural mother at all times told Respondent that he was the father and testimony from both the Respondent and the natural mother verified that no one else could be the father. Respondent visited the natural mother and the child in the hospital every day from the date of birth, which was on a Thursday through Saturday Evening, when the natural mother requested that he not come on Sunday so she could consider what she wanted to do. The natural father returned to the hospital on Monday morning to visit again with the child and was told that the mother and child had been discharged on Sunday. After contacting the natural mother and finding that she had surrendered the child for adoption, Respond-

ent immediately contacted an Attorney in an attempt to locate where the child had been taken. After the entry of the Order of the Trial Court on October 31, 1983, Respondent had custody of the child from that date until December of that year when the Appellate Court stayed the final Judgment of the Trial Court pending Appeal. Respondent has had custody of the minor child continuously since October 3, 1984.

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SUMMARY OF ARGUMENT

Respondent would submit and request that the Petition for Writ of Certiorari be denied and dismissed for several reasons. First of all, the Petition for Writ of Certiorari was not filed within the prescribed time of Ninety (90) days as prescribed by 28 U.S.C. § 2101(C).

Secondly, the Petition for Writ of Certiorari should be denied and dismissed for the reason that none of the special or important reasons required by Supreme Court Rule 17 exist here. The Petitioners had initially received a full trial and hearing and opportunity for discovery. Thus, the requirements of Due Process and Equal Protection were more than fully satisfied in this case.

Third, the Petition for Writ of Certiorari should be denied and dismissed on the ground that the sole issue in the scope of this Appeal is whether or not the Trial Court correctly followed the Mandate of the Illinois Appellate Court for the Fourth Appellate District in af-

firming its award of custody of the minor child to Respondent after ROBERT W. LEDBETTER, JR. had entered his Appearance and consented to the Orders of the Court by way of a verified pleading. The issues attempted to be raised by Petitioners were rendered *res judicata* by the decision of the Appellate Court of the Fourth Appellate District in the case of *In Re: Baby Girl Ledbetter*, 125 Ill. App. 3d 306, 465 N.E.2d 962 (1984).

Fourth, there is not a substantial difference between and among the State jurisdictions that the putative father has certain rights in the proceeding for an adoption of his natural child.

ARGUMENT

I. Jurisdiction

Respondent would submit that the action has not been timely filed and should be dismissed on that basis. A Petition for Writ of Certiorari must be applied for within Ninety (90) days after the entry of any Judgment or Decree. 28 U.S.C. § 2101(C). The time to petition does begin to run from the date of the denial of the Petition for Rehearing, *provided the Petition for Rehearing is timely. United States v. Healy*, 376 U.S. 75 (1975) 11 L. Ed. 2d 527, 84 S.Ct. 553. The Petitioners did not file their Motion for Leave to File a Motion for Reconsideration until January 7, 1986. This was Four (4) days after being notified by telephone call from the Clerk of the Supreme Court's Office that their Petition for Writ of Certiorari was being returned for not being timely filed. The Order

of the Supreme Court denying their Petition for Leave to Appeal was entered October 2, 1985, not October 8, 1985 as indicated in Petitioners' Appendix, and it was, therefore, more than Ninety (90) days after the entry of that Order on October 2, 1985 that the first Petition for Writ of Certiorari was received by the Supreme Court. The Supreme Court of Illinois subsequently denied the Motion for Leave to File a Motion for Reconsideration. Thus, Petitioners' Motion was not timely filed as it was filed solely for the purpose of expanding the time in which to appeal to this Court. The Order of the Supreme Court of Illinois was also not a ruling on a Motion for Reconsideration. A Motion for Reconsideration was not filed nor considered by the Supreme Court of Illinois.

II. The Matters Attempted To Be Raised By Petitioners Have Been Rendered Res Judicata By The Prior Appeal In This Cause.

The Petitioners' Writ of Certiorari should also be denied because the issue on this Appeal is not the Adoption proceeding. That proceeding has expired and no further Appeal is taken from it. The trial on the Petition for Adoption and Counter-Petition of Respondent for custody was held on October 31, 1983. It was at that trial that the Order of the Trial Court was entered in favor of the Respondent-Counter-Petitioner, JAMES C. ELLISON, FINDING that he was the natural father and that he was not an unfit person to have custody of the child. He did receive custody of the child immediately following the trial, only to have that custody taken away when

the Appellate Court for the Fourth Appellate District of Illinois stayed the judgment pending Appeal. In an opinion filed June 21, 1984, the Appellate Court for the Fourth Appellate District of Illinois remanded the case with specific instructions. As the Appellate Court for the Fourth Appellate District stated in the second Appeal, the clear intent of that Order was to give ROBERT LEDBETTER, JR., who had been married to the mother of BABY GIRL LEDBETTER at the time of her conception and only ROBERT LEDBETTER, JR., the opportunity to assert any rights he might wish to assert and that the previous Order should be confirmed if LEDBETTER appeared but disclaimed any interest in the proceeding. Thus, the intention of the Appellate Court on its June 21, 1984 Order was not to reverse the Trial Court's finding that Respondent was the father and the child should be properly placed with him, but only to afford ROBERT W. LEDBETTER, JR., who had been allegedly married to the natural mother at the time of conception, with an opportunity to come forward and be heard if he so wished. Petitioners did not Appeal that decision of the Appellate Court for the Fourth Appellate District of Illinois. The posture of the case on this Appeal was solely whether the Trial Court properly followed the Order of the Appellate Court in affirming its award of custody to Respondent after ROBERT W. LEDBETTER, JR. had filed a verified pleading stating he did not contest any of the matters of the Court. All other issues were *res judicata*. When a case is remanded with specific instructions, the Trial Court may undertake only such proceedings as conform to those instructions. *Rosenbaum v. Rosenbaum*, 94 Ill. App.3d 352, 49 Ill. Dec. 919, 418 N.E.2d 939, 942 (1st Dist. 1981).

III. The Rights Of Natural Or Putative Fathers Are Well Established.

As to the merits of Petitioners' argument that State Courts are applying differing standards, the first point that should be made is that Adoption is a purely statutory creation and proceeding. Thus, those differences that do exist are attributable to the difference in State Statutes being reviewed. Secondly, close analysis of the cases cited by Petitioners will reveal that none of the decisions abrogates the rights of the natural or putative father. *Brown v. County of San Joaquin*, 601 F. Supp. 653 (E.D. Cal. 1985) dealt with the suit of a State Licensed Foster Parent license, pursuant to California Statutes, to challenge the removal of a foster child from her custody without a prior hearing; *Polovchak v. Meese*, 774 F.2d 731 (7th Cir. 1985) dealt with the case of a 16 year old Russian boy who sought asylum in this country, when his parents returned to the Soviet Union and attempted to take him with them; *Quillion v. Walcott*, 434 U.S. 246 (1978), dealt with the attempt of a natural mother and her current husband to adopt her child that had been in her custody for 11 years, over the objections of the natural father, who had never seen nor supported that child in the 11 year period of time; and of *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977), which dealt with the case of foster parents and foster parents' organizations in New York State challenging the constitutionality of the procedures for removal of foster children from foster homes. In the latter case, the Court held that the state wide proceeding was not constitutionally defective. Thus, there is absolutely no evidence at all that State Courts are applying varying tests or burdens

of proof. Any differences at all exist because of differences in the State Statutes which the Courts are interpreting.

IV. Petitioners Were Not Denied Due Process Or Equal Protection At Any Stage In These Proceedings.

Petitioners argue that their fundamental due process rights were violated when they were denied standing to cross-examine MR. LEDBETTER after he entered his Appearance, Disclaimer of Paternity and Response in this case. First of all, there was no hearsay. MR. LEDBETTER filed a verified pleading. This made the action of the Trial Court one in the nature of entering judgment on the pleadings or one of Summary Judgment when no issues remain in controversy after the filing of pleadings. The documents were not admitted as evidence of paternity at trial but as pleadings stating MR. LEDBETTER's position in the case.

The Due Process-Equal Protection clauses of the Constitution as applied to States through the Fourteenth Amendment, establish that a party is entitled to notice and an opportunity to be heard. *Rehbock v. Dixon*, 458 F. Supp. 1056 (D.C. Ill. 1978). In this cause, the Petitioners' initiated the proceedings and had a trial before a Judge after receiving full discovery rights under the Illinois Practice and Procedures Act. They received the fullest protection of the Due Process and Equal Protection clauses. Additionally, if not earlier aware, they were aware of MR. LEDBETTER's existence approximately Five (5) months prior to the trial on the merits when his identity was disclosed at a Discovery and Evidence Deposition of the natural mother. They had full opportunity

to depose him or bring him into the case as a party within that Five (5) month period and voluntarily elected not to do so. They cannot now claim to have been denied due process in being not allowed to take his Discovery Deposition over Two (2) years after they knew of his existence.

The Illinois Adoption Act is contained in Illinois Revised Statutes, Chapter 40, Par. 1501, et seq. Illinois Revised Statutes (1983), Chapter 40, Par. 1510, which was in effect at the time of the original trial in this matter, states as follows:

> "1510 Consents to Adoption. Except as hereinafter provided in this section, Consents shall be required in all cases, unless the person whose consent would otherwise be required shall be found by the Court, by clear and convincing evidence, to be an unfit person, as defined in Section 1. of this Act, or the parent of an adult sought to be adopted. Where Consents are required in the case of adoption of a child, the Consents of the following persons shall be sufficient:
>
> (a) The parents;"

It is clear that Illinois Statutory Law requires consent of both parents and that if a parent does not consent, that parent must be found by clear and convincing evidence to be unfit. The Illinois Statutes further set forth the specific grounds of unfitness in Illinois Revised Statutes (1983), Chapter 40, Par. 1501, Sub-paragraph D. The Act further specifically sets forth where proceedings of Adoption may be commenced (Par. 1505), the contents of the Petition for Adoption (Par. 1507), service of process (1509), and the nature and form of notice to the putative father (1515). There is nothing in the Adoption Act which denies any party the right to a full hearing or notice of

any proceedings, which are the essential elements of due process. *Rehbock v. Dixon*, 458 F. Supp. 1056 (D.C. Ill. 1978).

Additionally, after Petitioners did not pursue the first Appeal any further, they did not have standing to question any of the actions of the Trial Court on remand because as to them, the judgment had become final. Also, ROBERT W. LEDBETTER JR.'s Appearance and Consent to the previous actions of the Court left the Court with no factual issue to determine. His Appearance, Disclaimer of Paternity and Response, as stated, was a verified pleading. Verified pleadings are not hearsay documents and, indeed, the definition of hearsay does not in any way encompass or apply to pleadings.

CONCLUSION

Respondent would submit and request that the Petition for Writ of Certiorari be denied and dismissed for several reasons. First of all, the Petition for Writ of Certiorari was not filed within the prescribed time of Ninety (90) days as prescribed by 28 U.S.C. § 2101(C). The Order of the Supreme Court of the State of Illinois denying Petitioners' Petition for Leave to Appeal to that Court was entered October 2, 1985. The initial Petition for Writ of Certiorari was returned to Petitioners from the Clerk of the Supreme Court's Office for the reason that it was filed more than Ninety (90) days after the entry of that Order. The Motion for Leave to file a Motion for Reconsideration in the Illinois Supreme Court was filed on January 7, 1986, after the return of the in-

itial Petition for Writ of Certiorari. Petitioners' Motion for Leave to File a Motion for Reconsideration was then denied and, thus, no Motion for Reconsideration was actually considered by the Illinois Supreme Court. The filing of the Motion for Leave to File Motion for Reconsideration was an attempt to artificially extend the length of time in which to file a Petition for Writ of Certiorari with this Court.

Secondly, the Petition for Writ of Certiorari should be denied and dismissed for the reason that none of the special or important reasons required by Supreme Court Rule 17 exist here. The Petitioners had initially received a full trial and hearing and opportunity for discovery. Thus, the requirements of Due Process and Equal Protection were more than fully satisfied in this case.

Third, the Petition for Writ of Certiorari should be denied and dismissed on the ground that the sole issue in the scope of this Appeal is whether or not the Trial Court correctly followed the Mandate of the Illinois Appellate Court for the Fourth Appellate District in affirming its award of custody of the minor child to Respondent after ROBERT W. LEDBETTER, JR. had entered his Appearance and consented to the Orders of the Court by way of a verified pleading. The issues attempted to be raised by Petitioners were rendered *res judicata* by the decision of the Appellate Court of the Fourth Appellate District in the case of *In Re: Baby Girl Ledbetter*, 125 Ill. App. 3d 306, 465 N.E.2d 962 (1984).

Fourth, there is not a substantial difference between and among the State jurisdictions that the putative father

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Respectfully submitted,

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